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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,385	12/14/2001	Douglas Paul Allard	11533.0012.CPUS05	6843 ✓
7590 11/25/2003		EXAMINER		
Howrey Simon Arnold & White, LLP		PECHHOLD, ALEXANDRA K		
750 Bering Drive		ART UNIT		
Houston, TX 77057		PAPER NUMBER		
		3671		

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

10/017,385

Applicant(s)

ALLARD ET AL.

Examiner

Alexandra K Pechhold

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2000.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 12-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-3 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Arntyr et al (US 4,419,232).**

Regarding claim 1, Arntyr discloses an apparatus comprising a:

(a) filtration device, seen as wire basket (2), dimensioned to fit in an inlet and obstructing part of the inlet,

(b) a filtration device support, seen as holder ring (1)

(c) an adjustable deflector ring connected to the filtration device support, seen as mounting flange (6), which can be viewed as one circular wall, and is adjustable in that it can be removed or lifted

Regarding claim 2, the flange (6) traverses the entire perimeter of the ring (1).

Regarding claim 3, the flange (6) contains space as shown in Figs. 1 and 3.

Regarding claim 5, the flange (6) as shown in Figs. 2 and 3 is positioned above the wire basket (2), and can be said to form a high flow bypass.

Regarding claims 6 and 7, Arntyr discloses a wire basket (2) (see abstract) formed of wire mesh panels, as shown in Figs. 1-3

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Regarding claim 8, the handle (5) seen in Fig. 1 can be viewed as a support bracket, and it is indirectly attached to the catch basin. The mounting means (7) on the holder ring (1), also shown in Fig. 1, can be viewed as flanges, and are indirectly connected to the wire basket (2) and indirectly supported by handle (5).

Regarding claim 9, an initial high flow bypass can be viewed as the water flow over flange (6), and a secondary high flow bypass can be viewed as the water filtering through filtering bag (3).

Regarding claim 10, the filtering bag (3) of Arntyr can be viewed as a fluid displaceable adsorbent container. Arntyr discloses that bag (3) is suitably made of a water permeable, relatively fine mesh filter cloth (Col 3, lines 19-21), and therefore will naturally adsorb some debris. The bag (3) is displaceable since it is only secured at the top.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arntyr et al (US 4,419,232) as applied to claim 1 above, and further in view of Singleton (US 6,261,445 B1).** Arntyr fails to disclose marking or advertising on the flange (6). Singleton teaches a marking on an enclosure for a drop inlet as shown in

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Fig. 3 for safety precautionary measures. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the flange of Arntyr to include marking or advertising as taught by Singleton, since Singleton states in column 2, lines 55-64 that such warning minimizes the risk of accidents due to persons falling or climbing into the open inlet.

**5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arntyr et al (US 4,419,232).** Arntyr fails to disclose the flange (6) being adjusted to fit within a particular catch basin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dimensions of the flange and therefore holder ring as well in Arntyr to fit within a particular catch basin, since obviously not all catch basin sizes are the same, and one would obviously size the apparatus to correspond with the size of the opening, and furthermore, it has been held that the provision of adjustability, where needed, involves only routine skill in the art. In re Stevens, 101 USPQ 284 (CCPA 1954).

***Allowable Subject Matter***

6. Claims 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments filed 9/8/03 are not persuasive with respect to claims 1, 4, and 11, but are persuasive with respect to claims 12 and 13.

With respect to applicant's argument regarding claim 1, applicant argues that in the instant invention, the adjustable deflector ring is *separate* from the filtration device support. Applicant points out a distinguishing feature between applicant's invention and Arntyr, since the Examiner is viewing the adjustable deflector ring in Arntyr as mounting flange (6), which is indeed structurally integral with the filtration device support, which is viewed as holder ring (1) in Arntyr. Fig. 1 of Arntyr indeed shows that they are two components on one integral structure. But nothing in the claim language precludes such an interpretation by the Examiner. The pertinent part of claim 1 recites "an adjustable deflector ring connected to said filtration device support...". The only requirement these two components have to meet is that they are *connected*, indeed the holder ring (1) and mounting flange (6) of Arntyr are connected. The claim recites no requirement of separateness.

With respect to the arguments regarding claim 4, claim 4 merely recites "...further including marking or advertising on said adjustable deflector ring." Applicant argues there is no support for incorporating the cautionary marking on the top of Singleton's filter cap on the adjustable deflector ring. The Examiner would like to point out that support for combining the teaching of Singleton to the structure of Arntyr was noted in the claim rejection in the previous office action. The Examiner distinctly pointed out the motivation stated in column 2, lines 55-64 of Singleton, which state that

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a marking serves as a safety precautionary measure in order to minimize the risk of accidents due to persons falling or claiming into an open inlet.

With respect to the arguments pertaining to claim 11, the claim recites "...whereby the dimensions of said adjustable deflector ring may be easily adjusted to fit within a particular catch basin." In rejecting the claim, the Examiner relied on case law wherein the provision of adjustability is within ordinary skill in the art. Furthermore, one of ordinary skill in the art would not fit a 2' diameter adjustable ring in a 1' opening, or vice versa, since clearly it would not fit and therefore not even serve its purpose.

With respect to claims 12 and 13, applicant's arguments are persuasive and therefore these claims are noted under the allowable subject matter.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

- Application/Control Number: 10/017,385
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

AKP  
11/20/03